



409th Contracting Support Brigade



409th CSB

Proper Use of T&M Contracts



U.S. Army Expeditionary Contracting Command

as of March 22, 2012

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T&M Bottom Line

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- Increased Use within the Government – However Least Preferred Contract Method
 - Viewed As Most Expensive Contract Type with Highest Risk to the Government
 - Must Avoid If Possible
- Increased Focus and Effort within the Government to Reduce Use of T&M
- POP Cannot Exceed Three Years Without HCA Approval
- FAR Requires D&F That No Other Contract Type Is Suitable
- DFARS Requires ASA, ALT Approval For Certain Types of Commercial Services





T&M Outline

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- Why discuss T&M?
- What is T&M?
- Plan to Reduce use of T&M Contracts
- When Reducing T&M...
- T&M Basics
- D&F Requirements, Approval, Control Number
- T&M Components & Blended Rate Scenario
- T&M Pros and Cons
- Common Uses of T&M
- Bona Fide Need
- Consider Before Proceeding
- Summary



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Why Discuss T&M?



- Over 61% of the \$531.8B spent by US Federal Agencies in FY08 were spent purchasing professional services
- GAO Report ([GAO Report 09-579](#)), dated June 2009 on Contract Management
 - KOs do not always properly code contracts as T&M
 - KOs often do not develop appropriate justifications for their use of T&M, and
 - use of Commercial T&M contracts is clearly understated
 - “T&Ms are considered high risk because contractor’s profit is tied to the number of hours worked. Thus, the gov’t bears the risk of cost overruns.”





Why Discuss T&M? (cont)



- **President Obama, Memorandum for Head of Executive Departments and Agencies: Government Contracting, dated March 2009**
- **Better Buying Power, Ashton Carter, dated Sept 2010**
 - “...expect market research to be strengthened in order to understand industry’s capabilities and appropriate pricing within the market in which we are buying.”
 - “When robust competition already exists, or there is recent competitive pricing history, I expect components to be predisposed toward FFP type contract arrangements.”





What is T&M?

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- A “T&M” contract provides for acquiring supplies or services on the basis of -
 - Direct labor hours at specified fixed hourly rates that include wages, O/H, G&A expenses, and profit; and
 - Materials actual cost (including handling and applicable burdens but no profit or fee) (except as provided for in FAR 31.205-26(e) and (f)).





What is T&M? (cont)

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“Labor Hour”

- A labor hour (LH) contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor.

FAR 16.602





Plan to Reduce Use of T&M

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- PARC signature now required on all D&Fs
- Increased involvement in services acquisitions > \$10M
- Implemented Service Contract Approval (SCA) process to approve all service requirements
- Review specific contracts and develop alternate contract strategies as appropriate
- Develop training targeted to contracting and requirements personnel
- Routinely monitor use and trends by organization and work categories
- Prior to exercising option, ensure T&M is still required; identify steps to eliminate/reduce future T&M

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Plan to Reduce Use of T&M

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FAR 16.103(a) states:

- Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. ***The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.***





Plan to Reduce Use of T&M

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FAR 16.103(c):

- In the course of an acquisition program, a series of contracts, or a single long-term contract, ***changing circumstances may make a different contract type appropriate in later periods than that used at the outset.*** In particular, contracting officers should ***avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.***





Plan to Reduce Use of T&M



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- Generally, cost/performance risk by contract type is:

Fixed Price

Cost

T&M

Gov't Risk: Low

Med High

Ktr Risk: High

Med Low





Plan to Reduce Use of T&M

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REBUILDING AN AUTOMOBILE ENGINE

Contract Type	Assumptions (note same costs, WGL 'profit')	Amount	Proposed/ Negotiated Price	Contractor Profit	Rate	"Over-run" Situation (+10hrs)	Contractor Profit	Effective Rate
Firm, Fixed Price								
			\$ 2,225	\$ 375	20.27%	\$2,225	\$ (75)	-3.26%
	30 Hours Labor @ \$55 (\$10 profit)	\$ 1,650		estimated	@cost \$ 1,800		estimated	
	\$500 Parts w/ 15% mark-up	\$ 575			@cost \$ 500			
Time and Materials								
			\$ 2,000	\$ 150	8.11%	\$2,500	\$ 200	8.70%
	30 Hours Labor @ \$50 (\$5 profit)	\$ 1,500			\$ 2,000			\$ 1,250
	\$500 Parts (no profit)	\$ 500			\$ 500			\$ 500
Cost Plus Fixed Fee								
			\$ 2,017	\$ 167	9.00%	\$2,467	\$ 167	7.24%
	30 Hours @ \$45 (costs only)	\$ 1,350			\$ 1,800			\$ 1,125
	\$500 Parts (fee bearing)	\$ 500			\$ 500			\$ 500
	Fixed Fee (9% initial estimate)	\$ 167			\$ 167			\$ 167





When Reducing T&M...

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- Performance Work Statements (PWSs) and D&Fs need to be consistent
- If you are transitioning to other contract types, don't forget to include the applicable clauses
- With other contract types, the acquisition team needs to do more upfront planning
- If switching to FFP, you must make sure the req'ts are well defined
- Reducing T&M takes away some flexibility, but you can add in flexibility with other contract types (orders, surge options, O&A CLINs, etc)





Application and Limitations

- T&M contract may be used only:
 - When it's not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence and
 - Only if

- **KO prepares a D&F that “No other contract type is suitable”**

AND

- **Contract includes a Ceiling Price that contractor exceeds at their own risk**

FAR 16.601(c) & (d)(1) & (d)(2)





T&M Basics (cont)

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- **T&M use with FAR Part 12**
 - FAR 12.207 requires use of FFP or FFP-EPA for commercial items.
 - Commercial Services may use T&M/LH if FAR 12.207(b) requirements are met.
- **DFARS 212.207(b)**
 - Limits use of T&M/LH to
 - 1) Services in support of a commercial item
 - 2) Emergency Repair Services





Key Point: Must receive ASA,ALT approval for all T&M commercial services that are not
(1) in support of a commercial item; or (2) emergency repair services

(See DFARS 212.207)





- **Clause 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts**
 - Hours worked times appropriate hourly rates (fixed hourly rates)
 - Materials at cost + handling (no profit or fee)
 - Ceiling price – Contractor shall notify KO if they have reason to believe that the total price for the effort will be substantially more or less than the ceiling price.
 - Gov't shall also advise the contractor if they have reason to believe the work will be substantially more or less
 - If contractor has reason to believe that 85% of the ceiling will be surpassed in the next 30 days, they shall notify the KO and provide a revised estimate to





Contract Administration

- T&M contract (vice CLIN) for “Best Effort”
 - Typically Funded on an Annual Basis
- Gov’t may require Re-performance if the contractual requirements are not met (FAR 52.246-6(f))
- CORs require additional training/experience for management of T&M/LH.
- KO/COR required to more closely monitor burn rate.





D&F Requirements

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- The D&F shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the D&F shall—
 - Include a description of the market research conducted;
 - Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

DFARS 216.601(d)(i)





D&F Requirements (cont)

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- Establish that the req't has been structured to minimize the use of T&M req'ts (e.g., limiting the value or length of the T&M portion of the contract; establishing fixed prices for portions of the req't); and
- Describe the actions planned to minimize the use of T&M contracts on future acquisitions for the same req'ts.





The determination and findings (D&F) shall be:

- Signed by the KO prior to the execution of the base period or any option periods; and
- Approved by the PARC; and
- Approved by the HCA prior to the execution of the base period when the base period plus any option periods exceeds 3 years.





D&F Approval (cont)

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CPM 11-6 dated 29 July 2011

- Policy mandates PARC approval on **ALL** D&Fs to utilize T&M/LH contracts including hybrid contracts.
- D&Fs requiring HCA approval must include PARC signature.

CPP 11-002 dated 29 Sept 2011

- PARC approval required for all solicitations, task orders, exercise of options, and modifications to obligate funds
- Maximize use of Class D&Fs as determined appropriate
- Legal review required over \$100K for contingency, \$300K for non-contingency, and all requiring HCA approval





D&F Control Number

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CPP 11-002, dated 29 Sept 2011 states:

Tracking: MOD will assign a tracking number to the D&Fs when submitted.

Policy revision forthcoming: RCO shall assign a control number to all T&M D&F's. MOD will use RCO control number for internal tracking.

Control # format: RCO-FY-D-XXX

- For FY12, start sequence with 100





T&M Components

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- “Hourly rate” means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualification of a labor category specified in the contract that are—
 - Performed by the contractor;
 - Performed by the subcontractors; or
 - Transferred between divisions, subsidiaries, or affiliates of the contractor.





T&M Components (cont)

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- “Materials” means—
 - Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
 - Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
 - Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
 - Applicable indirect costs.

FAR 16.601





Blended Rates

- Blended Rates are allowable IAW FAR 16.601(e)(1) & FAR Provision 52.216-29 (Non-Commercial Item Acquisition With Adequate Price Competition).
- However, DFARS 216.601(e) prescribes that Para (c) of FAR 52.216-29 be replaced with language IAW DFARS 252.216-7002 Alternate A (Time-and-Materials/Labor-Hour Proposal Requirements – Non-Commercial Item Acquisition with Adequate Price Competition).





- Blended Rates Scenario
 - Prime has 4 categories of hourly labor rates
 - Subcontractor A has 3 hourly labor rates
 - Subcontractor B has 3 hourly labor rates
 - Affiliate has 3 hourly labor rates
- How many separate rates should the contractor propose to?





T&M Components (cont)

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- The negotiated acquisition should include 13 separate rates as follows:
 - 4 from the prime
 - 3 from Sub A
 - 3 from Sub B
 - 3 from the affiliate
- Prime cannot submit a proposal of blended rates which include the subs and affiliates





T&M Pros and Cons

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- Pros
 - Contractor only bills hours worked
 - Can be more flexible than other contract types
 - Can be more expedient than other contract types
- Cons
 - Least preferred contract type
 - D&F required
 - Contractor has no incentive for cost control or labor efficiency; each hour worked carries profit
 - Only requires a “good faith” (best) effort
 - Must exercise additional oversight (surveillance)





Common Uses of T&M

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- Emergency repair, maintenance, and overhaul
- Unpredictable surge requirements
- Certain unanticipated evaluation of repairs
- Certain equipment installation and associated support services where the extent of labor or parts required cannot be predicted





Bona Fide Need

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- When selecting contract type and deciding how to structure your CLINs, consider Bona Fide Need issues
 - When the Estimate Is Updated, if you broke task into multiple CLINs, you may not be able to rob Peter to pay Paul (move money around between CLINs)
 - T&M funding issues can be complex
 - Issues are very situation specific
 - Seek Legal and FM advice





Consider Before Proceeding



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- Are task completion criteria clear?
 - If yes, think other contract types
 - If no, consider short term T&M/LH or FP(LOE) to achieve definition
- What are the uncertainties?
 - Technical uncertainties (known unknowns)?
 - Cost volatility? (might consider cost-plus)
- Is there adequate oversight/surveillance?
 - Pre-award (to set price ceiling or cost estimate)
 - Post-award (to monitor performance of T&M)

**T&M is least preferred
contract type**





Summary

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- T&M is least preferred contract type
- T&M shall only be used in certain circumstances
- KOs must advise PMs on the risks inherent in T&M and encourage use of a more preferred contract type such as fixed price, where appropriate
- T&Ms are high risk because contractor's profit is tied to the number of hours worked
- Only requires a Best Effort
- Additional oversight is required





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Questions?



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